UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	
	)	
THOMAS J. CAHILLANE,	)	CASE NO.: 04-65210 JPK
	)	Chapter 7
Debtor.	)	
**********		
GORDON E. GOUVEIA, TRUSTEE,	)	
Plaintiff,	)	
v.	)	ADVERSARY NO.: 06-6088
DOUGLAS J. PIERCE,	)	
Defendant.	)	
**********		
DOUGLAS J PIERCE,	)	
Third Party Plaintiff,	)	
v.	)	
JP MORGAN CHASE BANK, N.A.,	)	
Third Party Defendant.	)	

MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION TO DISMISS THIRD PARTY COMPLAINT

This adversary proceeding is before the Court on the Motion of JPMorgan Chase Bank, N.A.[1] to Dismiss Third Party Complaint, filed on June 1, 2006, which seeks dismissal of the Third-Party Complaint filed by Douglas J. Pierce ("Pierce")[2] on April 19, 2006 pursuant to Fed.R.Bankr.P. 7012(b)/Fed.R.Civ.P. 12(b)(1) and (6). Because the Court deemed Chase's motion to present matters outside the pleadings to the Court, by its Order Establishing Briefing Schedule entered on June 21, 2006, Chase's motion is treated as one for summary judgment pursuant to Fed.R.Bankr.P. 7012(b)/Fed.R.Civ.P. 12(b). On July 17, 2006 the Court entered its "Order Modifying Order Establishing Briefing Schedule" in which the Rule 12(b)(1) and Rule

[1] The third party defendant will be referred to herein as "Chase".

[2] Pierce is a defendant in this adversary proceeding, which was initiated on March 17, 2006, when Gordon E. Gouveia, as the Chapter 7 Trustee of the bankruptcy estate of Thomas Joseph Cahillane in Case No. 04-65210, filed a complaint against Pierce seeking the avoidance of several allegedly fraudulent transfers. Pierce filed an answer to that complaint on April 19, 2006, which denied the substantive averments of the complaint and asserted several affirmative defenses.

12(b)(6) assertions were bifurcated, with the Rule 12(b)(1) issues to be determined first. Pursuant to the June 21, 2006 order, Chase filed its Statement of Material Facts on June 30, 2006. Pursuant to the Court's July 17, 2006 order, Pierce filed his Statement of Genuine Issues on August 1, 2006.

This determination addresses Chase's Rule 12(b)(1) motion in the manner provided by Fed.R.Bankr.P. 7056/Fed.R.Civ.P. 56(c); the record for this purpose is provided by the pleadings, and the evidence provided by Chase's Statement of Material Facts filed on June 30, 2006, as responded to by Pierce's Statement of Genuine Issues filed on August 1, 2006.[3]

I. STANDARDS FOR REVIEW OF MOTIONS FOR SUMMARY JUDGMENT

The procedural mechanism of summary judgment is provided by Rule 56 of the Federal Rules of Civil Procedure, made applicable to adversary proceedings by Fed.R.Bankr.P. 7056. The principle standard to be followed by the Court in determining a motion for summary judgment is stated as follows in Fed.R.Civ.P. Rule 56(c):

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The inquiry that the court must make is whether the evidence presents a sufficient disagreement to require trial or whether one party must prevail as a matter of law. *Anderson v. Liberty Lobby*, 106 S. Ct. 2505, 2509-10 (1986). In deciding a motion for summary judgment, the Court should not "weigh the evidence". *Anderson*, 477 U.S. at 249, 106 S. Ct. at 2510-11; *Illinois Bell Telephone Co. v. Haines and Co., Inc.*, 905 F.2d 1081, 1087 (7th Cir. 1990). However, "if evidence opposing a summary judgment is merely colorable, or is not significantly

[3] On September 18, 2006, Chase filed an objection to Pierce's Statement of Genuine Issues. The Court entered an order on October 10, 2006, which denied Chase's objection.

probative, summary judgment may be granted". *Anderson*, 106 S. Ct. at 2511; *Trautvetter v. Quick*, 916 F.2d 1140, 1147 (7th Cir. 1990).

The moving party bears the burden of showing that there is an absence of evidence to support the non-movant's case; *Celotex Corp. v. Catrett*, 106 S. Ct. at 2548, 2554 (1986), i.e., the lack of a genuine issue of material fact. *Big O Tire Dealers, Inc. v. Big O Warehouse*, 741 F.2d 160, 163 (7th Cir. 1984); *Korf v. Ball State University*, 726 F.2d 1222, 1226 (7th Cir. 1984).

When ruling on a motion for summary judgment, inferences to be drawn from underlying facts contained in such materials as attached exhibits and depositions must be viewed in a light most favorable to the party opposing the motion. *United States v. Diebold, Inc.*, 82 S. Ct. 993, 994 (1962); *See also, Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356, (1986) (All inferences to be drawn from the underlying facts must be viewed in a light most favorable to the nonmoving party); *Yorger v. Pittsburgh Corning Corp.*, 733 F.2d 1215, 1218 (7th Cir. 1984); *Marine Bank Nat. Ass'n. v. Meat Counter, Inc.*, 826 F.2d 1577, 1579 (7th Cir. 1987). Fed.R.Civ.P. 56(e) requires the nonmoving party to set forth specific facts, which demonstrate that genuine issues of fact remain for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 106 S. Ct. at 1355; the opposing party may not defeat the motion by merely relying on the allegations or denials in its pleadings.

II. MATERIALS TO BE CONSIDERED BY THE COURT

Fed.R.Civ.P. 56(c) provides that the Court is to consider "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any", in determining whether or not a genuine issue/genuine issues of material fact exist. N.D.Ind.L.B.R. B-7056-1 sets forth certain procedural requirements which must be met to properly present a motion for summary judgment to the Court for decision. Principal among the requirements of that rule is the submission of a "Statement of Material Facts". The purpose of the statement is to identify the facts as to which there is no genuine issue. These facts are to

be supported by appropriate citations to the record, i.e. discovery responses, depositions and affidavits. In turn, the responding party is to file a "Statement of Genuine Issues", setting out the material facts with respect to which the responding party asserts that genuine issues of material fact exist.

For the purpose of the motion presently pending, the Court will consider the following pleadings: the Trustee's complaint/amended complaint; the answers filed by Pierce in response;[4] the third party complaint filed by Pierce; and the Rule 12(b)(1) motion to dismiss filed by Chase in response to the third party complaint.

The averments of the Trustee's complaint and of the Trustee's amended complaint are extensive in relation to Pierce as a designated defendant. Given that the pleadings are a part of the record which must be, and have been, considered by the Court in the determination stated in this decision, no issue material to this decision would be elucidated by recounting the Counts of the Trustee's pleadings in relation to Pierce. Suffice it to say that the Trustee has asserted claims against Pierce in relation to Pierce's alleged dealings with Thomas Cahillane under multiple provisions of federal and state law which, if determined in favor of the Trustee, would result in a monetary recovery from Pierce. Further suffice it to say that the factual core of the Trustee's allegations against Pierce, and of Pierce's allegations against Chase, are significantly intertwined and inter-related, in that both deal in large part with the same transactions involving Thomas Cahillane. That said, no purpose is served by setting forth the specific averments of pleadings. The issue of whether the Court has subject matter jurisdiction is not to be determined solely by the averments of the pleadings. Rather, the issue before the Court is to be primarily determined by the record apart from the pleadings made by the parties

[4] The Trustee plaintiff filed an amended complaint on November 13, 2006, which added parties as defendants with respect to the Trustee's complaint, to which Pierce responded by his answer filed on December 18, 2006.

under Fed.R.Bankr.P. 7056/Fed.R.Civ.P. 56(c).

The apparent entanglement of factual issues raised by the Trustee's complaint against Pierce, and by Pierce's third party complaint against Chase, have very little bearing on Chase's motion to dismiss. Due to the nature of "notice" pleading under the Federal Rules of Civil Procedure, the parties' pleadings alone do not provide the record necessary to determine the issue raised by Chase under Rule 12(b)(1). The issue concerning the Court's jurisdiction depends on the entire record. The most important element in the record by far is that made by the parties in Chase's Statement of Material Facts filed on June 30, 2006 and by Pierce's Statement of Genuine Issues filed on August 1, 2006.

The material facts apart from the pleadings under Fed.R.Bankr.P. 7056/Fed.R.Civ.P. 56(c) are not disputed. In his Statement of Genuine Issues, Pierce has agreed with Chase's statement of material facts with respect to the following facts:

1. Pierce has not asserted in the third party complaint or in the Chapter 7 bankruptcy case of Thomas J. Cahillane any act or omission by the Chapter 7 Trustee or by the debtor that has caused or created a right to payment in favor of Pierce.

2. Pierce has not asserted in the third party complaint or in the Chapter 7 bankruptcy case of Thomas J. Cahillane any right, claim or interest of Pierce against the Chapter 7 estate.

3. Pierce has not asserted in the third party complaint any right, claim or interest of Pierce in connection with the Chapter 7 case that arises under, or has as its source, Title 11 of the United States Code.

4. Pierce has not sought any relief against the Chapter 7 Trustee of the estate of Thomas J. Cahillane in his third party complaint.

5. Pierce's third party complaint seeks damages only against Chase.

6. Pierce has not filed a proof of claim in the Chapter 7 case of Thomas J. Cahillane.

In paragraph 19 of its statement of material facts, Chase asserted that the "causes of action alleged by Pierce (in the third party complaint) are not related to the causes of action

alleged in (the Trustee's complaint)", an assertion which Pierce disputed. The Court deems Chase's assertion to relate solely to an issue of law, and thus no assertion of a "material fact" can arise from it, regardless of Pierce's response.

Pierce's Statement of Genuine Issues, stated in his August 1, 2006 filing, seeks to assert matters which are not germane to the determination of Chase's Rule 12(b)(1) motion, based as it is on the Court's subject matter jurisdiction over the third party complaint. While perhaps relevant to the cause of action asserted against Chase in the third party complaint, and Chase's Rule 12(b)(6) motion in response – an issue upon which the Court expresses no determination whatsoever – the material facts relevant to this decision are those stated in paragraphs 1-6 above.

III. LEGAL ANALYSIS

The sole issue before the Court is whether Pierce's third party complaint should be dismissed pursuant to Fed.R.Civ.P.12(b)(1). In order to prevail on its motion, Chase must establish that there is no genuine issue as to any material fact, and that as a matter of law the Court lacks subject matter jurisdiction over the third party complaint.

A bankruptcy court has jurisdiction only over "civil proceedings arising under title 11, or arising in or related to cases under title 11", to the extent those cases are referred to it by the district court.[5] *Doctors Hospital of Hyde Park, Inc. v. Desnick, et al.*, 308 B.R. 311, 317 (Bankr. N.D.Ill. 2004); 28 U.S.C. § 1334(b); 11 U.S.C. § 157(a). A case "arises under" Title 11 and is within the core jurisdiction of the court when the cause of action is based on a right or remedy expressly provided in the Bankruptcy Code. *Id.*; *In re Kewanee Boiler Corp.*, 270 B.R. 912, 917 (Bankr. N.D.Ill. 2002), which is not the case here, as Pierce concedes; "Materials to be

[5] L.R. 200.1(a)(1) of the Rules of the United States District Court for the Northern District of Indiana refer all cases under Title 11, and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11, to the United States Bankruptcy Court for the Northern District of Indiana.

Considered by the Court", number 3, *supra*. Likewise, Pierce has conceded that the matters addressed by his third party complaint do not "arise in" a case under Title 11: he asserts no action against the Chapter 7 Trustee or against the debtor; "Materials to be Considered by the Court", numbers 1, 2 and 4, *supra*. That leaves a matter "related to" a case under Title 11 as the sole source of the Court's jurisdiction.

As stated in *In re FedPak Systems*, 80 F.3d 207, 213 (7th Cir. 1996):

> As the U.S. Supreme Court explained recently, "[t]he jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in and limited by statute." *Celotex Corp. v. Edwards*, 514U.S. 300, ----, 115 S.Ct. 1493, 1498, 131 L.Ed.2d 403 (1995).
>
> We begin with the bankruptcy jurisdiction of the district courts, which extends to "all civil proceedings arising under title 11, or arising in *or related to* cases under title 11." 28 U.S.C. § 1334(b) (emphasis added). Bankruptcy judges "constitute a unit of the district court," 28 U.S.C. § 151, and the district court may refer to them "any or all proceedings arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 157(a). The jurisdiction of the bankruptcy courts is thus "derivative" because it flows from the statutory grant of jurisdiction to the district courts. In re K & L, Ltd., 741 F.2d 1023, 1028 (7th Cir.1984). To summarize, this jurisdiction includes the power to adjudicate proceedings "arising in," "arising under," or "related to" a case under title 11. *Zerand-Bernal Group, Inc. v. Cox,* 23 F.3d 159, 161 (7th Cir.1994).

In this case, the issue before the Court is whether the third party complaint falls within the ambit of "related to" jurisdiction. As a general observation, bankruptcy courts more often than not lack "related to" jurisdiction to determine third party complaints arising out of adversary proceedings; *See*, *In re Pettibone*, 135 B.R. 847, 850 (Bankr. N.D.Ill. 1992). The purpose of bankruptcy court jurisdiction is to provide a single forum for resolving all claims to the debtor's assets and extends no farther than that; *In re Doctors Hospital of Hyde Park, Inc.*, 308 B.R. 311, 317 (Bankr. N.D.Ill. 2004). The fact that "two creditors have an internecine conflict is of no moment, once all disputes about their stakes in the bankrupt's property have been resolved"; *In re Doctors Hospital of Hyde Park, Inc.*, *supra*., at 317, referencing *In re Xonics*, 813 F.2d 127,

131 (7th Cir. 1987).

The law of the Seventh Circuit is that "related to" jurisdiction exists over a matter when the matter affects the amount of property for distribution to creditors from the debtor's estate, or the allocation of property among creditors; *In re FedPak Systems*, at 213. As stated in *In re FedPak Systems*, at 214:

> This circuit has articulated a more limited and, we believe, more helpful definition of the bankruptcy court's "related to" jurisdiction. Our precedents hold that "[a] case is related" to a bankruptcy when the dispute 'affects the amount of property for distribution [i.e., the debtor's estate] or the allocation of property among creditors.' " *In re Memorial Estates, Inc.,* 950 F.2d 1364, 1368 (7th Cir.), *cert. denied,* 504 U.S. 986, 112 S.Ct. 2969, 119 L.Ed.2d 589 (1992) (quoting *In re Xonics, Inc.,* 813 F.2d 127, 131 (7th Cir.1987)). As we explained recently:
>
> > [T]he ['related to'] language should not be read . . . broadly. [It] is primarily intended to encompass tort, contract, and other legal claims by and against the debtor, *claims that, were it not for bankruptcy, would be ordinary stand-alone lawsuits between the debtor and others* but that section 1334(b) allows to be forced into bankruptcy court so that all claims by and against the debtor can be determined in the same forum.
>
> *Zerand-Bernal,* 23 F.3d at 161 (emphasis added, citation omitted).
>
> We have interpreted "related to" jurisdiction narrowly "out of respect for Article III" (see discussion *supra*) as well as to prevent the expansion of federal jurisdiction over disputes that are best resolved by the state courts. *Home Ins. Co. v. Cooper & Cooper, Ltd.,* 889 F.2d 746, 749 (7th Cir.1989); *see also In re Kubly,* 818 F.2d 643, 645 (7th Cir.1987) (the "limited jurisdiction" of the bankruptcy court "may not be enlarged by the judiciary because the judge believes it wise to resolve the dispute."). Additionally, we believe that common sense cautions against an open-ended interpretation of the "related to" statutory language "in a universe where everything is related to everything else." Gerald T. Dunne, *The Bottomless Pit of Bankruptcy Jurisdiction,* 112 Banking L.J. 957 (Nov.-Dec.1995).

The United States Supreme Court discussed the scope of a bankruptcy court's "related to" jurisdiction in the case of *Celotex Corporation v. Edwards, et ux.*, 514 U.S. 300 (1995). In *Celotex*, a judgment in the amount of $281,025.88 was entered against Celotex Corporation in favor of "injured" plaintiffs for asbestos related injuries in April of 1989. In order to stay

execution of the judgment pending an appeal, Celotex posted a $294,987.88 supersedeas bond obtained from Northbrook Property and Casualty Insurance Company. Subsequently, the appeal was unsuccessful, and Celotex filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. In an exercise of its equitable jurisdiction pursuant to 11 U.S.C. § 105(a), the bankruptcy court issued an injunction staying all proceedings involving Celotex, "regardless of . . . whether the matter is on appeal and a supersedeas bond has been posted by [Celotex]". The injured asbestos plaintiffs sought permission from the district court to execute on the bond, which was allowed. The Fifth Circuit Court of Appeals affirmed this decision and held that, "the integrity of the estate is not implicated in the present case because the debtor has no present or future interest in this supersedeas bond". The issue was whether the injunction order was within the bankruptcy court's "related to" jurisdiction.

The Supreme Court stated that although Congress did not specify the scope of "related to" jurisdiction, the choice of words implies some breadth:

> The jurisdictional grant in § 1334(b) was a distinct departure from the jurisdiction conferred under previous Acts, which had been limited to either possession of property by the debtor or consent as a basis for jurisdiction. See S.Rep. No. 95-989, 2nd Sess., pp. 153, 154 (1978) U.S.Code Cong. & Admin.News 1978, pp. 5787, 5939, 5940. We agree with the views expressed by the Court of Appeals for the Third Circuit in *Pacor, Inc. v. Higgins,* 743 F.2d 984 (1984), that "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate," *id.,* at 994; see also H.R.Rep. No. 95-595, pp. 43-48 (1977), and that the "related to" language of § 1334(b) must be read to give district courts (and bankruptcy courts under § 157(a)) jurisdiction over more than simple proceedings involving the property of the debtor or the estate. We also agree with that court's observation that a bankruptcy court's "related to" jurisdiction cannot be limitless. See *Pacor, supra,* at 994; cf. *Board of Governors, FRS v. MCorp Financial, Inc.,* 502 U.S. 32, 40, 112 S.Ct. 459, 464, 116 L.Ed.2d 358 (1991) (stating that Congress has vested "limited authority" in bankruptcy courts).

Id., at 308.

The Supreme Court held that "the issue of whether respondents are entitled to immediate execution on the bond against Northbrook is at least a question 'related to' Celotex's bankruptcy". *Id.*, at 310. However, this determination was premised upon the bankruptcy court's findings that allowing immediate execution on the bond would have had "a direct and substantial adverse affect on Celotex's ability to undergo a successful reorganization"; *Id.*, at 310. Based upon those findings, and the fact that the underlying bankruptcy case was a reorganization proceeding under Chapter 11 and not a liquidation under Chapter 7, the Supreme Court sustained "related to" jurisdiction with respect to proceedings to immediately execute on the bond.

The facts of *Celotex* are far afield from the material facts of this record, and *Celotex* offers no harbor for Pierce for the Court's "related to" jurisdiction. The issues raised by Pierce's third party complaint have no effect on Cahillane's ability to reorganize – Cahillane's case is a Chapter 7 case, not a "reorganizing" Chapter 11 case.

The gravamen of the Trustee's complaint is the recovery of transfers allegedly made by Cahillane to Pierce. Either the transactions involving Pierce and the debtor are avoidable transfers, or they are not. If a transfer as alleged by the complaint is avoidable, then the estate receives the benefit of the recovery; if it isn't avoidable the estate receives nothing. The possibility that Pierce may have a separate action against Chase, arising from his dealings with that entity, has no bearing on whether the transactions, as pled by the Trustee, may lead to a judgment for recovery against Pierce by the Chapter 7 estate. If the Trustee wins, Pierce will be obligated to pay the bankruptcy estate the amount determined to be owed by him, period. (Period). Pierce's action against Chase has no bearing on whether the estate will potentially gain or lose an asset; it only relates to whether Chase may have to pay Pierce. In sum, Pierce's third party action has **no** effect on the amount of property of the Chapter 7 estate available for distribution, or on the allocation of property among creditors of the Chapter 7

estate. The law of the Seventh Circuit, as stated in *In re FedPak Systems, supra.,* mandates that Pierce's action is not within the Court's "related to" jurisdiction.

As stated earlier, bankruptcy courts usually do not have "related to" jurisdiction to determine third party complaints which arise from an adversary proceeding, and that is the case here. As cogently summarized in *In re Pettibone*, 135 B.R. 847, 850 (Bankr. N.D.Ill. 1992):

> In *In re Spaulding & Co.,* 111 B.R. 689 (Bankr.N.D.Ill.1990), *aff'd,* 131 B.R. 84 (N.D.Ill.1990), the debtor filed an Adversary Complaint against a secured creditor seeking to set aside a preference under 11 U.S.C. § 547(b). The creditor filed a third party complaint against debtor's former counsel based on counsel's involvement in previous litigation. However, the creditor's claim against the law firm did not affect that creditor's claim in bankruptcy, and was merely a remedy it could pursue elsewhere should its defenses fail in the § 547(b) action. The third party complaint was dismissed. 111 B.R. at 689.
>
> In *In re Peterson,* 104 B.R. 94 (Bankr.E.D.Wisc.1989), creditors filed an Adversary Complaint requesting that debtors' obligation to them be declared nondischargeable under 11 U.S.C. § 523(a). Debtors moved for leave to file a third party complaint claiming a right of indemnification or contribution from the third party defendant. That motion was denied because the proposed third party complaint "would have no effect on the amount of property in the estate available for distribution to creditors, nor would it affect any other creditors." *Id.* at 97.
>
> In *In re John Peterson Motors, Inc.,* 56 B.R. 588 (Bankr.D.Minn.1986), an examiner filed a complaint under § 547(b). The defendant filed a third party complaint seeking indemnity or contribution as a result of a rescinded stock purchase agreement. The court dismissed the third-party complaint, noting that the dispute was between two non-debtors over which should be ultimately responsible for sums recovered from defendant in the main action. *Id.* at 591.
>
> International's cross-claims here are like the third-party complaints in the cases cited above. They comprise a dispute between two non-debtors which will merely determine which party will ultimately be responsible in the event that International is found liable in the underlying Adversary actions. The creditors and the Plan in the underlying bankruptcy procedure will remain unaffected by its outcome. Therefore, this Court lacks "related to" jurisdiction under § 1334 to adjudicate the cross-claim.

Pierce's third-party complaint is not an exception to the foregoing litany.[6] Consequently, the Court finds that there is no genuine issue as to any material fact, and that Chase's motion to dismiss Pierce's third party complaint pursuant to Fed.R.Bankr.P. 7012(b)/Fed.R.Civ.P. 12(b)(1) should be granted.

IV. CONCLUSION

IT IS ORDERED, ADJUDGED AND DECREED that there is no genuine issue as to any material fact under Fed.R.Bankr.P. 7056/Fed.R.Civ.P. 56(c) , and that the Motion of JPMorgan Chase Bank, N.A. to Dismiss Third Party Complaint, filed on June 1, 2006, should be granted pursuant to Fed.R.Bankr.P. 7012(b)/Fed.R.Civ.P. 12(b)(1): The Third-Party Complaint filed by Douglas J. Pierce ("Pierce") on April 19, 2006 is dismissed.

Dated at Hammond, Indiana on April 5, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record

[6] This statement is conclusively established by the record. Moreover, at a hearing held in this adversary proceeding on March 21, 2007, Pierce's counsel Patrick Mulchay stated that the premise of the Court's jurisdiction in relation to the third party complaint is that if Pierce is successful against Chase – and in the event he loses on the Trustee's complaint against him – the Trustee might have better luck collecting any judgment entered against Pierce, presumably because Pierce might have a source of funds arising from a judgment against Chase. Putting aside the fact that any recovery Pierce might derive against Chase would not be earmarked for payment of any judgment the Trustee might obtain against Pierce, Pierce's action against Chase will rise or fall on its own, entirely apart from the Chapter 7 Trustee's action against Pierce.